

Veterans Endeavor for Treatment and Support: The Role the Army Judge Advocate General's Corps Should Play in Establishing Federal Veterans Treatment Courts in and around Major Army Installations

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Treatment through the Veteran's Court is a path to recovery and victory for both the Soldier and the Court.¹

I. Introduction

What should happen to a Soldier who drives drunk in a Light Medium Tactical Vehicle (LMTV) carrying a load of range explosives? The Command will want to hold the Soldier accountable for endangering the lives of her fellow Soldiers. She is likely to be removed from her unit and separated from the Army. But at the same time, the Command wants this Soldier to get the treatment she needs to address her substance use disorder, and she would certainly benefit from supervision and mentorship as she transitions out of the Army.

Unfortunately, the Command loses its ability to treat, supervise, and mentor Soldiers at separation. Until now, this situation forced the Command to make a choice: Retain the Soldier indefinitely to enroll her in long-term treatment or quickly separate the Soldier to improve the unit's overall readiness and reinforce unit discipline. Left to her own devices, this soon-to-be Veteran may end up as another statistic in the tragedies that are Veteran homelessness and Veteran suicide. Thankfully, the establishment of a Veterans Treatment Court at Fort Hood ensured this Veteran was held accountable and had the treatment, supervision, and mentorship she needed to get back on her feet.

D.T. joined the Army when she was eighteen years old. She was assigned as an Military Occupation Specialty 88M, Motor Transport Operator, with the First Cavalry Division. It was 2010, and she knew full well she would deploy to Iraq or Afghanistan or both.

She deployed twice. Her first tour was challenging; she was far from home and had only limited ability to communicate with her family back in Florida. When she returned, her relationship with her husband was strained at

best. They unsuccessfully tried to start a family. Her second tour was worse than the first, but exposure to improvised explosive devices (IEDs) and mortar fire concealed other less apparent threats to her psyche. While deployed, her husband left her. The distance and difficult communication was too much for their fragile relationship.

At this point, D.T. felt like four years in the Army had left her with just four overseas service bars, a wrecked family, and overwhelming anxiety. She lacked any semblance of stability. She lacked direction. She did not report her anxiety, depression, or painful memories. She did not seek help.

Instead, she found the bottle—after duty hours at first, then on duty. Her addiction compounded her depression. She smuggled booze to the field when her unit went out for training. She spent a week in the field flirting only briefly with sobriety. At the exercise's conclusion, D.T. was ordered to drive an LMTV carrying range explosives back to the assembly area. Even her well-developed, high-functioning alcoholic abilities fell short on the task of driving the "deuce-and-a-half." After a short distance into the drive, the truck commander relieved D.T. The junior enlisted in her platoon sheepishly passed "rumors" of D.T.'s intoxication to the command. Noncommissioned officers escorted D.T. to the Military Police Station. Three hours after driving and without having another drink, she blew a .111.

The chain of command took appropriate action based on the information they had at the time. From their perspective, this Soldier had a debilitating substance use disorder that jeopardized the lives of her fellow Soldiers. Within a week, D.T. was inpatient at a twenty-eight-day rehabilitation program. The Commanding General directed the General Officer Memorandum of Reprimand filed in D.T.'s

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¹ Honorable Judge Jeffrey C. Manske, United States Federal Magistrate Judge, Western District of Texas, Waco Division.

permanent records after D.T. failed to submit a timely response. A mere forty-five days from the incident, D.T. was out of the Army; she received a General Discharge under Honorable Conditions. Her depression, anxiety, and post-traumatic stress disorder (PTSD) did not factor into her separation because she never reported any of her troubles to Military Mental Health Specialists or her command.

The command referred the Driving While Intoxicated (DWI) prosecution to the Special Assistant U.S. Attorney (SAUSA) who charged D.T. with DWI, Deadly Conduct, and Reckless Driving. As 2015 came to a close, D.T. faced upwards of two years in jail, nearly \$10,000 in fines, and the collateral consequences of federal DWI and Deadly Conduct convictions.

Luckily for D.T., her prosecution coincided with the initiation of the Fort Hood Veterans Endeavour for Treatment and Support (VETS) Court.

D.T. applied to the Fort Hood VETS Court and was accepted. She entered a guilty plea to each of the counts pending against her. If she successfully completes the program, the prosecutor will move to dismiss those charges. On the very day she entered her plea, D.T.'s assigned Veteran mentor welcomed her. With the assistance of the court's Veterans Justice Outreach Specialist (VJO) who is a Department of Veterans Affairs (VA) Social Worker, D.T. enrolled in treatment with the local VA Hospital and Vet Center. The VJO even helped D.T. apply for and receive VA disability for her PTSD and anxiety. The VA determined D.T.'s disability rating as 50%.

The foregoing events are not hypothetical.² These facts are a real world testament to the value of a Veterans Treatment Court. At the time of this publication, D.T. is nearly finished with the twelve-month VETS Court program of intensive supervision, accountability, and treatment. She maintains her sobriety, regularly attends Alcoholics Anonymous meetings and other treatment, submits to random mandatory breath tests, and meets weekly with her supervision officer, VJO social worker, and local community Veteran mentor. Every first and third Friday she checks in with the full VETS Court Team led by the federal magistrate judge. Here, she openly discusses her progress and challenges, including her enrollment in college. For the first time since she left her parent's home, she has her feet under

her. She has stability. She has direction. Her life is out of the bottle and back in her hands.

Many Veterans struggle with substance use disorder and other mental health challenges, and like D.T., many Veterans do not report their mental health symptoms until it is too late.³ Veterans may not seek treatment for these issues for a variety of reasons. Regardless of the explanation, without treatment, they gradually cede control of their lives to these issues. Too often this loss of control degenerates into criminal offenses: DWIs, illicit drug use, aggressive behavior. To address this, Veterans Treatment Courts (VTCs) have developed across the nation to redirect Veterans who commit criminal offenses into the treatment they need. When enrolled in a VTC, Veterans receive help in addressing their underlying substance use disorder and other mental health challenges, and they obtain the treatment and skills necessary to resume being a productive and law-abiding member of society.

The Army Judge Advocate General's (JAG) Corps should lead efforts in developing federal VTCs at its major installations. The creation of additional federal VTCs would align areas of exclusive federal jurisdiction with efforts in state courts⁴ to care for Veterans with substance use disorder and other mental health challenges. Such action would reduce the number of recidivistic Veterans, reconcile Veterans with their communities, and contribute to efforts at reducing Veteran suicide and Veteran homelessness.

The Army JAG Corps prides itself on the responsiveness and candid advice it provides commanders, as well as the care and legal services it provides to Soldiers, retirees, and their families. The Army JAG Corps could further its role as a leader in these areas through supporting the development of VTCs at major Army installations. Commanders with installation security responsibilities will find tremendous value in VTCs through reduced on-installation recidivism and increased effectiveness of installation law enforcement. The courts' participants and their families will also directly benefit from the rehabilitative focus of VTCs and the enduring treatment connections VTCs establish.

This article aims to educate leaders in the Army JAG Corps on why federal VTCs should be a priority and how the Army JAG Corps can develop effective federal VTCs on and near major Army installations.⁵ This article will first summarize the origins of VTCs and lay out the benefits of these programs. Next, it will address the specific need for VTCs on and around major military installations. The Article

² "D.T." are not necessarily the real initials of this U.S. Army veteran. This choice was made to provide some modest protection to her real identity. Additionally, the facts from this narrative will not be cited with specificity.

³ See, e.g., William H. McMichael, *The Battle on the Home Front: Special Courts Turn to Vets to Help Other Vets*, A.B.A. J. (Nov. 1, 2011), http://www.abajournal.com/magazine/article/the_battle_on_the_home_front_special_courts_turn_to_vets_to_help_other_vets/.

⁴ See discussion *infra* Part II (Origins of Veterans Treatment Courts).

⁵ Ample social science research supports the effectiveness of the treatment court model, and fidelity to those principles must be observed. See, e.g., Sarah P. Fritsche, *Assessing and Responding to Risk: Theory and Practice for Criminal Justice and Treatment Professionals*, CTR. FOR CT. INNOVATION (Dec. 12, 2012), <http://www.drugcourta.org/RNR.pdf>. The current article, however, is not intended to comprehensively address the state of social science research on this topic. In developing Veterans Treatment Courts (VTCs), court and justice professionals must work closely with treatment providers and behavioral health specialists to ensure appropriate application of validated social science tools.

will conclude with a description of operations of the federal VTC at Fort Hood, a summary of alternative models, and a playbook on how to get VTCs up and running at other military installations.

II. Origins of Veterans Treatment Courts

The federal VTC located on Fort Hood is a novel application of a rapidly proliferating concept.⁶ A VTC is a form of “Problem Solving Court,”⁷ a concept which traces its roots in the United States to the Drug Treatment Court launched in Dade County, Florida, in 1989.⁸ Seeing addiction and incarceration as a vicious cycle, a group of justice professionals in that jurisdiction reworked the traditional justice model to mandate intensive substance use disorder treatment for drug offenders in lieu of incarceration.⁹ Since their inception, Drug Treatment Courts have received broad support because of their ability to balance the need to hold offenders accountable while simultaneously providing persons suffering from substance use disorders with the tools and treatment necessary to overcome their addiction and maintain their recovery.¹⁰

At its most fundamental, a Drug Treatment Court uses the power and authority of the judge to keep drug offenders in treatment and under the supervision of court officers.¹¹ The judge rewards success and sanctions failure using her authority to modify conditions of bond supervision or probation.¹² This type of mandatory court-ordered drug treatment has proven effective,¹³ premised on the classification of drug addiction as a disease (“substance use disorder”) best addressed through supervision, treatment, and counseling.¹⁴ Relying on evidence-based treatment grounded

on the principles of behavior modification¹⁵ and risk-need-responsivity principles,¹⁶ Drug Treatment Courts succeed by moving those suffering from substance use disorders out of the traditional justice system and treating the underlying mental health disease.¹⁷

The success and proliferation of Drug Treatment Courts led to the development of other Problem Solving Courts. Mental Health Courts, for example, began using the power and authority of the courts to connect defendants suffering from non-substance related mental health challenges with treatment providers in the community.¹⁸ Recognizing the value of collaboration among criminal justice and mental health treatment professionals, these courts found further success in breaking down institutional barriers.¹⁹ Mental Health Courts further expanded the group of criminal justice stakeholders beyond officers of the court and moved past some of the limitations of the adversarial criminal justice system.²⁰

Judge Robert Russell, a forward-thinking judge in upstate New York, pushed the concept one step further.²¹ Judge Russell recognized that many of the defendants in the Buffalo Drug Treatment Court and Mental Health Court were Veterans.²² He also discovered that many of the Veterans in those programs responded well to the other Veteran participants and the Veterans who volunteered to support the courts.²³ Based on these observations, Judge Russell created the first VTC in 2008.²⁴ By exploiting the Veterans’ success in highly structured environments and formally incorporating a vet-to-vet mentoring program²⁵ to enhance support to the

⁶ Sean Clark et al., *Development of Veterans Treatment Courts: Local and Legislative Initiatives*, VII DRUG COURT REVIEW 171, 175 (2010).

⁷ “Problem Solving Court” refers to “a problem solving court involves a single judge that works with a community team to develop a case plan and closely monitor a defendant’s compliance, imposing proper sanctions when necessary.” *Problem-Solving Courts Resource Guide*, NAT’L CTR. FOR ST. CTS., <http://www.ncsc.org/Topics/Problem-Solving-Courts/Problem-Solving-Courts/Resource-Guide.aspx> (last visited 20 Sept. 2016).

⁸ David B. Wilson et al., *A Systematic Review of Drug Court Effects on Recidivism*, 2 J. OF EXPERIMENTAL CRIMINOLOGY 459, 460 (2006).

⁹ *Drug Court History*, NAT’L ASS’N OF DRUG CT. PROFS., <http://www.nadcp.org/learn/what-are-drug-courts/drug-court-history> (last visited Sept. 20, 2016).

¹⁰ Wilson, *supra* note 8, at 460.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 461.

¹⁴ *Id.*

¹⁵ These principles include leverage, intensity, predictability, and rehabilitative emphasis. *Id.*

¹⁶ MICHAEL REMPEL, EVIDENCE-BASED STRATEGIES FOR WORKING WITH OFFENDERS (April 2014),

[http://www.courtinnovation.org/sites/default/files/documents/EvidenceBas edStrategiesForWorkingWithOffenders.pdf](http://www.courtinnovation.org/sites/default/files/documents/EvidenceBasedStrategiesForWorkingWithOffenders.pdf).

¹⁷ *Id.*

¹⁸ MICHAEL THOMPSON ET AL., IMPROVING RESPONSES TO PEOPLE WITH MENTAL ILLNESSES: THE ESSENTIAL ELEMENTS OF A MENTAL HEALTH COURT (2007), https://www.bja.gov/Publications/mhc_essential_elements.pdf.

¹⁹ *Id.* at vii.

²⁰ *Id.*

²¹ ROBERT T. RUSSELL, ATTORNEY’S GUIDE TO DEFENDING VETERANS IN CRIMINAL COURT 517 (2014).

²² *Id.* at 516.

²³ *Id.* at 520.

²⁴ *Id.* But see Jack W. Smith, *The Anchorage, Alaska Veterans Court and Recidivism: July 6, 2004—December 31 2010*, 94 ALASKA L. REV. 29 (2012).

²⁵ Veteran Peer Mentor programs are a particularly powerful component of the VTC model, not typically available in other types of treatment courts. See JIM MCGUIRE ET AL., AN INVENTORY OF VA INVOLVEMENT IN VETERANS COURTS, DOCKETS, AND TRACKS (Feb. 7, 2013), http://www.justiceforvets.org/sites/default/files/gallery/An%20Inventory%20of%20VA%20involvement%20in%20Veterans%20Courts_1.pdf.

Veteran-participants, Judge Russell created a program which exceeded all expectations.²⁶

Following in the footsteps of the Mental Health and Drug Treatment Courts, VTCs burgeoned across the United States. In less than a decade, justice professionals, with the support of organizations like “Justice for Vets,”²⁷ have established more than 350 of these courts nationwide, though only a handful operate in federal jurisdictions.²⁸

In recognition of the success of similar programs and the manifest need to care for Veterans, the Federal Magistrate Court on Fort Hood, led by Federal Magistrate Judge Jeffrey Manske, joined the VTC movement with a goal of connecting Veterans who live in the Fort Hood area to enduring treatment solutions and community mentors in lieu of conviction and incarceration.²⁹ The Fort Hood VETS Court, established in January 2016, is just the fifth pretrial diversion VTC in the federal system and the first ever on a U.S. military installation.³⁰

III. Benefits of Veterans Treatment Courts

Veterans Treatment Courts build upon the emergent nationwide effort to reduce mass incarceration and better address the root causes of criminal behavior through treatment and supervision.³¹ Such goals recognize the financial burden and inefficacy of incarcerating individuals with substance use disorders and other mental health challenges. While Drug Treatment Courts and Mental Health

Courts provide a tremendous benefit for high risk members of the general population, Veterans with substance use disorders and other mental health challenges form a significant cohort who share several common characteristics that enhance the conditions for a successful problem solving court intervention. Veterans Treatment Courts provide an evidence-based results-oriented and cost-effective means of ensuring just outcomes that take into account the mitigation and extenuation associated with a Veteran’s offense when substance use disorder or other mental health challenges played a contributing role.

A. Evidence-based Results

Among the most salient measures of effectiveness in the criminal justice system is the reduced recidivism of participants.³² This metric is especially important when working with individuals with PTSD and substance use disorders, which both pose significant risks for recidivism.³³ If left untreated, chronic substance use disorders and other mental health issues perpetuate unhealthy and dangerous behavior due in large part to underdeveloped coping skills and an inability to exert self-control.³⁴

Veterans Treatment Courts have demonstrated extraordinary success in reducing recidivism. Judge Russell’s court in Buffalo, New York, discussed earlier boasts a minuscule 3% recidivism rate³⁵ compared with the 70% recidivism rate of drug offenders in the traditional criminal justice system.³⁶ Other problem solving courts also

²⁶ RUSSELL, *supra* note 21.

²⁷ “Justice For Vets is a professional services division of the National Association of Drug Court professionals, a 501(c)3 non-profit organization based in Alexandria, VA. Justice for Vets believes that no veteran or military service member should suffer from gaps in service, or the judicial system when they return to their communities.” *About Us*, JUST. FOR VETS, <http://www.justiceforvets.org/about> (last visited Sept. 20, 2016).

²⁸ DEP’T OF VETERANS AFFS., VETERANS COURT INVENTORY 2014 UPDATE: CHARACTERISTICS OF AND VA INVOLVEMENT IN VETERANS TREATMENT COURTS, DOCKETS, AND TRACKS FROM THE VETERANS JUSTICE OUTREACH SPECIALIST PERSPECTIVE (Feb. 2016), <http://www.va.gov/HOMELESS/docs/VTC-Inventory-FactSheet-0216.pdf>. As of the date of this publication, there are Federal Veterans Treatment Courts operational or under development in the Western District of Kentucky, Eastern District of Missouri, District of Montana, Southern District of Ohio, Western District of Pennsylvania, District of Utah, Western District of Virginia, Eastern District of Louisiana, and District of Maryland, though some of these are reentry courts, not pretrial diversion courts. E-mail from Daniel P. Bubar, Assistant U.S. Att’y, Western District of Virginia, “Veterans Treatment Court Table,” (May 5, 2016, 13:04 CST) (on file with author).

²⁹ Marcus Floyd, *Veterans Court Pilot Program to Start on Fort Hood*, ARMY.MIL (Dec. 22, 2015), http://www.army.mil/article/160339/Veterans_Court_pilot_program_to_start_on_Fort_Hood/; Jeremy Schwartz, *Fort Hood Creates First-of-Its-Kind Veterans Court* AUSTIN AMERICAN-STATESMAN (Dec. 11, 2015), <http://www.mystatesman.com/news/news/local-military/fort-hood-creates-first-of-its-kind-veterans-court/nphby/>; Carlos Morales, *Fort Hood Begins First-of-Its-Kind Veterans Treatment Court on Base*, TEXAS STANDARD (Feb. 1, 2016), <http://www.texasstandard.org/stories/fort-hood-begins-first-of-its-kind-veterans-treatment-court-on-base/>.

³⁰ MCGUIRE, *supra* note 25.

³¹ DEP’T OF JUST., SMART ON CRIME: REFORMING THE CRIMINAL JUSTICE SYSTEM FOR THE 21ST CENTURY (Aug. 2013), <https://www.justice.gov/sites/default/files/ag/legacy/2013/08/12/smart-on-crime.pdf>.

³² “Rates of crime and recidivism have long served as critical measures for the performance of the Nation’s criminal justice system.” John J. DiIulio, Jr., *Rethinking the Criminal Justice System: Toward a New Paradigm*, in PERFORMANCE MEASURES FOR THE CRIMINAL JUSTICE SYSTEM 1 (Oct. 1993), <http://www.bjs.gov/content/pub/pdf/pmcjs.pdf>.

³³ Hanna Pickard & Seena Fazel, *Substance Abuse As a Risk Factor for Violence in Mental Illness: Some Implications for Forensic Psychiatric Practice and Clinical Ethics*, CURR OPIN PSYCHIATRY 349 (July 2013); “Substance abuse is associated with a several-fold increase in the likelihood of continuing criminal offending.” Douglas B. Marlowe, *Evidence-Based Sentencing for Drug Offenders: An Analysis of Prognostic Risks and Criminogenic Needs*, 1 CHAP. J. OF CRIM. JUST. 167 (2009). See generally FRED OSHER ET AL., ADULTS WITH BEHAVIORAL HEALTH NEEDS UNDER CORRECTIONAL SUPERVISION: A SHARED FRAMEWORK FOR REDUCING RECIDIVISM AND PROMOTING RECOVERY (2012), https://www.bja.gov/Publications/CSG_Behavioral_Framework.pdf.

³⁴ *Id.*

³⁵ Interview with Robert T. Russell, Judge, at the Nat’l Ass’n of Drug Ct. Profs. Ann. Training in Anaheim, Cal. (June 2, 2016).

³⁶ PATRICK A. LANGAN & DAVID J. LEVIN, RECIDIVISM OF PRISONERS RELEASED IN 1994 (June 2002), <http://www.bjs.gov/content/pub/pdf/rpr94.pdf>; Cassia Spohn & David Holleran, *The Effect of Imprisonment on Recidivism Rates of Felony*

show considerable success, though the specific metrics vary. Meta-analyses of drug courts, for example, show an average of ten to fifteen percent reduction in recidivism.³⁷ Three-quarters of such courts “significantly reduced crime” in their jurisdiction.³⁸ In fact, some jurisdictions boasted overall reductions in crime as high as forty percent which officials from the jurisdictions attributed to the implementation of Problem Solving Courts in those locations.³⁹ A longitudinal study of the Clark County Mental Health Court in Nevada showed individuals who enroll in that problem solving court were four times less likely to be arrested one year after enrollment compared with the year before enrollment.⁴⁰ Specific to VTCs, statistics from the National Association of Drug Court Professionals and Justice for Vets show that seventy percent of Veterans complete a VTC program once enrolled, and seventy-five percent are not rearrested for at least two years after their completion.⁴¹ While the relatively new nature of VTCs limits some data collection and long-term longitudinal studies,⁴² the available statistics for VTCs and other Problem Solving Courts demonstrate that VTCs achieve results.

Veterans, due to the nature of combat, deployments, and separation from family, have higher prevalence rates of certain types of mental health issues than the general population.⁴³ These mental health issues include post-traumatic stress disorder (PTSD),⁴⁴ anxiety, depression, traumatic brain injury (TBI), and substance use disorders

(specifically related to alcohol and prescription pain medication).⁴⁵

Veterans Treatment Courts successfully reduce recidivism because they address the types of mental health issues most prevalent in Veterans, such issues being both significant contributors to criminal activity⁴⁶ and very treatable.⁴⁷ For example, PTSD, depression, and substance use disorders are significantly more treatable than other mental health issues.⁴⁸

While the prevalence of mental health challenges in the American Veteran population is alarming, it is important to note that treatments for PTSD and substance use disorders are quite effective.⁴⁹ Evidence-based treatments for these issues are now available and well-studied, and research continues to improve upon established methods and further improve results.⁵⁰ The bigger challenges remain the tasks of identifying those suffering with these substance use disorders and other mental health issues, and once they are identified, connecting them with treatment.⁵¹

Full identification of Veterans with symptoms of PTSD or related mental health issues has proven extraordinarily challenging.⁵² Due to a variety of factors, mental health issues are significantly underreported by current and former

Offenders: A Focus on Drug Offenders, 40 CRIMINOLOGY 329 (May 2002).

³⁷ Douglas B. Marlowe, *Research Update on Adult Drug Courts*, NAT’L ASS’N OF DRUG CT. PROFS. (Dec. 2010), http://www.nadcp.org/sites/default/files/nadcp/Research%20Update%20on%20Adult%20Drug%20Courts%20-%20NADCP_1.pdf.

³⁸ *Id.* at 2.

³⁹ *Id.*

⁴⁰ Russell, *supra* note 21, at 519-20 (citing RISDON N. SLATE & W. WESLEY JOHNSON, CRIMINALIZATION OF MENTAL ILLNESS: CRISIS AND OPPORTUNITY FOR THE JUSTICE SYSTEM 156 (2008) (also citing Virginia A. Hiday & Bradley Ray, *Arrests Two Years After Exiting a Well-Established Mental Health Court*, 61 PSYCHIATRIC SERVICES 463, 467 (2010)).

⁴¹ McMichael, *supra* note 3.

⁴² NAT’L DRUG CT. INST., LOCAL DRUG COURT RESEARCH: NAVIGATING PERFORMANCE MEASURES AND PROCESS EVALUATIONS (2006), https://www.bja.gov/Publications/Local_Drug_Court_Research.pdf.

⁴³ Fran H. Norris & Laurie B. Slone, *Understanding Research on Epidemiology of Trauma and PTSD*, 24 PTSD RES. Q. 4 (2013).

⁴⁴ The diagnosis of “Post Traumatic Stress Disorder” was first recognized in the third edition of the *Diagnostic Statistical Manual*. While an understanding of the impact of combat on the psyche of a Soldier (“war neuroses”) has been part of the study of psychology since World War I, the specific definition of post-traumatic stress disorder, including “combat stress,” and “military sexual trauma” continue to be revised. See S. Freud, *Psychoanalysis and War Neuroses*, 5 INT’L PSYCHOL. LIBR. (1919).

⁴⁵ AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (5th ed. 2013); *Substance Abuse in the*

Military, NAT’L INST. ON DRUG ABUSE, <https://www.drugabuse.gov/publications/drugfacts/substance-abuse-in-military> (last visited Sept. 20, 2016).

⁴⁶ Similarly, veterans historically have been incarcerated at higher rates than the general population. JENNIFER BRONSON, & MARCUS BERZOFOSKY, U.S. DEP’T OF JUST., VETERANS IN PRISON AND JAIL, 2011-12 (Dec. 2015). It is difficult to avoid linking the two. RAND CORP., INVISIBLE WOUNDS OF WAR: PSYCHOLOGICAL AND COGNITIVE INJURIES, THEIR CONSEQUENCES, AND SERVICES TO ASSIST RECOVERY 134 (2008).

⁴⁷ AMERICAN PSYCHIATRIC ASSOCIATION, *supra* note 45, compare *id.* at 102 (“development and course” for schizophrenia), with *id.* at 277 (PTSD); see OSHER, *supra* note 34.

⁴⁸ *Id.*

⁴⁹ Tori DeAngelis, *PTSD Treatments Grow in Evidence, Effectiveness*, 39 MONITOR ON PSYCHOL. 1 (Jan. 2008); U.S. DEP’T OF VETERANS AFF., NAT’L CTR. FOR PTSD, EVIDENCE-BASED TREATMENTS FOR PTSD: WHAT THE RESEARCH TELLS US ABOUT PATIENT IMPROVEMENT (Feb. 2011), http://www.ptsd.va.gov/Public/understanding_TX/CourseList/Course_NCPTSD_Treatment_1435/assets/00015006.PDF; Ramin Mojtabei & Joshua G. Zivin, *Effectiveness and Cost-Effectiveness of Four Treatment Modalities for Substance Disorders: A Propensity Score Analysis*, 38 HEALTH SERVS. RES. 233 (Feb. 2003).

⁵⁰ Judith Cukor et al., *Evidence-Based Treatments for PTSD, New Directions, and Special Challenges*, 1208 ANN. N.Y. ACAD. SCI. 82 (2010).

⁵¹ RAND CORP., *supra* note 46, at 55.

⁵² As recently as 2008, most existing studies define PTSD and depression using criteria that are likely to exclude significant number of service members who have these conditions. *Id.*

members of the military.⁵³ Delayed onset of symptoms,⁵⁴ desire to “Soldier on,” fear of losing a security clearance or other career consequences,⁵⁵ and stigma associated with mental health issues⁵⁶ all contribute to this problem. Also, the lack of treatment for sub-threshold symptomology⁵⁷ can exacerbate relatively minor symptoms, creating more challenging mental health issues down the road.⁵⁸

Veterans Treatment Courts greatly assist Veterans who have a delayed onset or delayed diagnosis of PTSD, TBI, and other mental health issues. Unfortunately, many Veterans were not in a position to receive treatment until after their military service concluded. In such cases, the Veteran did not receive a medical retirement or effective care while on active duty. D.T.’s case, discussed in the introduction of this article, provides a striking example.

Highlighting the case of D.T. is not intended to disparage D.T.’s unit. In fact, D.T.’s commander took appropriate action to intervene and address the substance use disorder once he was aware of it. Rather, D.T.’s story is intended to provide a specific, real-life example of when, despite the best intentions of the commander, he separated a Soldier without addressing her service-connected post-traumatic stress and anxiety disorders because the Soldier did not report her symptoms to anyone before she was separated.

Substance use disorders and other mental health problems have a tendency to get worse when not addressed.⁵⁹

⁵³ About half of Global War on Terrorism Veterans who need treatment for major depression or post traumatic stress seek it, while half of those who seek treatment receive “minimally adequate care.” RAND Corp., *supra* note 46. Twenty to fifty percent of active duty service members and reservists report psychosocial problems, relationship problems, depression, and symptoms of stress reactions, but fewer than forty percent of those who meet strict diagnostic criteria receive mental health services. Dep’t of Def. (DoD), AN ACHIEVABLE VISION: REPORT OF THE DEPARTMENT OF DEFENSE TASK FORCE ON MENTAL HEALTH 5 (June 2007) <http://www.justiceforvets.org/sites/default/files/files/Dept%20of%20Defense,%20mental%20health%20report.pdf>.

⁵⁴ For example, the strain in family function observed around twelve months after a deployment. *Id.*

⁵⁵ Evidence of stigma for psychological health issues is “overwhelming.” *Id.* But, it is important to note that, “the military’s medical institutions have incorporated cutting-edge clinical treatments and developed methods to reduce the stigma of help-seeking behavior.” Evan R. Seamone, Evan R., *Attorneys as First-Responders: Recognizing The Destructive Nature of Posttraumatic Stress Disorder On The Combat Veteran’s Legal Decision-Making Process*, 202 MIL. L. REV. 144 (Winter 2009). “Changes in security clearance protocols now recognize that it is perfectly normal for a Soldier to seek mental health counseling in relation to combat experiences.” *Id.* at n. 58, citing, Editorial, *Army is Tracking Stress Disorders in the Field*, Miami Herald, July 27, 2008.

⁵⁶ DoD, *supra* note 53. See generally Thomas W. Britt, *The Stigma of Mental Health Problems in the Military*, 172 MIL. MED. 157 (Feb. 2007).

⁵⁷ Sub-threshold symptomology refers to symptoms of anxiety or other mental health disorders which are apparent, reportable, and consistent with diagnosis, but do not include all of the symptoms sufficient for a specific diagnosis. See, e.g., Mar Rivas Rodriguez et al., *Definitions and Factors Associated with Subthreshold Depressive Conditions: A Systematic Review*, 12 BIOMED CENT. PSYCHIATRY 181 (2012).

When they worsen, they frequently lead to criminal behavior, either due to self-medication⁶⁰ or as a direct result of impairment due to mental illness.⁶¹ Moreover, the comorbidity of substance use disorders with other mental health issues⁶² increases the likelihood that a Veteran’s PTSD or other mental health issues will lead to criminal behavior involving substance use (e.g., DWI or illegal use of controlled substances).⁶³

Though underreporting and underutilization of treatment will remain a problem, the time of arrest for a criminal offense (while certainly not ideal) is an effective time for intervention due to the focused attention and power of the criminal justice system. While an individual could balk at the prospect of participating in an intensive treatment regimen, in the author’s experience, a period of enforced sobriety⁶⁴ creates conditions necessary for many individuals facing the prospect of a criminal conviction and incarceration to recognize the need to make a change.⁶⁵

In addition to sharing a high prevalence of unreported and untreated PTSD, TBI, anxiety, depression, and substance use disorder, anecdotal evidence suggests Veterans share several positive characteristics that make them ideal candidates for Problem Solving Court interventions. Specifically, Veterans’ military experiences make them better at coping with adversity, especially when facing the challenges with the backing of their fellow Veterans.⁶⁶ Moreover, the shared experience of prior military service,

⁵⁸ RAND CORP., *supra* note 46, at 48. Untreated PTSD and TBI cause indirect societal costs such as domestic violence, strain on families, suicide. *Id.* at 8.

⁵⁹ See generally Osher, *supra* note 33.

⁶⁰ RAND CORP., *supra* note 46, at 134.

⁶¹ “The cumulative effect of [PTSD symptoms including cognitive changes and heightened psychophysiological arousal] can prompt individuals with PTSD to act aggressively or impulsively out of self-preservation, without full appreciation of the harmful consequences to oneself and others.” Allison E. Jones, *Veterans Treatment Courts: Do Status-Based Problem-Solving Courts Create an Improper Class of Criminal* 43 WASH. U. J. L. & POL’Y 307, 316 (2014).

⁶² Jim McGuire & Sean Clark, *PTSD and the Law: An Update*, 22 PTSD RES. Q. 1 (2011); RAND Corp., *supra*, note 46, at 134 (noting that 75% of Vietnam Veterans with PTSD met criteria for substance use disorders and 79% and 37% of Veterans with TBI met criteria for alcohol and drug use disorders).

⁶³ See generally Osher, *supra* note 33.

⁶⁴ Sobriety can be enforced by order of the court monitored by transdermal alcohol detector and drug screening. Violations of this order would result in mandatory inpatient treatment or a period of incarceration as a last resort. See 18 U.S.C. 3142 (2016). For information regarding transdermal alcohol detection see National Highway Traffic Safety Administration, *Transdermal Alcohol Monitoring: Case Studies* (Aug. 2012), www.nhtsa.gov/staticfiles/nti/pdf/811603.pdf.

⁶⁵ Captain Robinson has served as a Special Assistant U.S. Attorney (SAUSA) from April 2015 through the date of this publication.

⁶⁶ Robert T. Russell, *Veterans Treatment Court: A Proactive Approach*, 35 NEW ENGLAND J. ON CRIM. & CIV. CONFIN. 360, 364 (Summer 2009).

deployments, combat, and Veteran *esprit de corps* and camaraderie forge strong, uplifting bonds among Veterans participating in the programs and those who mentor the participants during the treatment program.⁶⁷ Finally, many Veterans find the structured curriculum and mandated treatment protocols familiar and comforting.⁶⁸

Common characteristics of Veterans create the conditions for life-changing impacts for those Veterans who are struggling when they enroll in a VTC. Prior to enrollment, these Veterans are overwhelmed by a substance use disorder or other mental health challenge which is not being effectively addressed. When a Veteran enrolls in a VTC, the court stakeholders and the Veteran and local communities embrace the Veteran. She establishes connections with enduring treatment solutions. She finds the help she needs. A Veteran enrolled in the program knows she has a team supporting him, just as she must support the other Veterans in the program. She feels valued and knows she is contributing once again to something bigger than herself.

B. Cost Effectiveness

Veterans Treatment Courts not only make life-changing impacts on a deserving population, but they also make economic sense. A VTC generally requires no new appropriations, physical infrastructure, or personnel; many VTCs utilize existing supervision resources and programs of treatment which are already otherwise available. The VTCs are designed to connect Veterans with federally-funded healthcare or community-based treatment to address the substance use disorder or other mental health issue.⁶⁹ The VA Healthcare System makes use of scale economies in existing programs to find an overall cost savings to taxpayers.⁷⁰ Moreover, the VA has become a leader in PTSD research and treatment because of its focus on caring for Veterans.⁷¹ Additional cost savings to the court are found by sharing supervision responsibilities among the court

supervision officers, social workers from the VA (e.g., the VJO's), and the Veteran mentors.

Community supervision is less expensive than incarceration.⁷² While many low-level offenders who find their way into VTCs may otherwise have received community supervision as a part of their sentence, a VTC can reduce overall costs of incarceration through reduced recidivism rates.⁷³ Continued drug use while on ordinary supervision typically leads to a relatively lengthy period of incarceration when that opportunity for community supervision is revoked.⁷⁴ The impact of VTCs is therefore magnified when considering the likelihood of continued illicit drug use by someone who truly has an addiction.

Available studies quantify some of this impact. Problem solving courts generally save jurisdictions between \$4,000 and \$12,000 per participant.⁷⁵ Some VTCs have published cost savings as high as \$600,000 annually due to reduced incarceration.⁷⁶ When accounting for broader assessment of economic impact, studies have found economic benefits of up to \$27 for every \$1 invested.⁷⁷ A federal VTC should expect a similar impact; in the federal system, incarceration costs eight times as much as supervision.⁷⁸

This information only tells part of the tale. Available figures do not assess the economic benefit of reduced future victimization or lost productivity due to untreated PTSD and depression.⁷⁹ Though many societal costs of criminal activity do not lend themselves to quantification, available measures demonstrate society is better off with Veterans connected with the treatment they need instead of in jail.⁸⁰

The creation of a VTC does, however, include opportunity costs in the program's initiation and operation, though many of these costs may be mitigated through appropriate docket management and exploiting available efficiencies. Whoever champions the development of the VTC⁸¹ will devote time and effort to the program's

⁶⁷ *Id.*

⁶⁸ Russell, *supra* note 21, at 520.

⁶⁹ RAND CORP., *supra* note 46, at 8.

⁷⁰ "The full range of services that VHA provided in 1999 would have cost about 21 percent more if those services had been delivered through the private sector at Medicare's payment rates." Cong. Budget Off., *Comparing the Costs of the Veterans' Health Care System with Private-Sector Costs* (Dec. 2014), https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/reports/49763-VA_Healthcare_Costs.pdf.

⁷¹ RAND CORP., *supra*, note 46, at 4.

⁷² *Did You Know? Imprisonment Costs 8 times More than Supervision*, U.S. COURTS (June 18, 2015), <http://www.uscourts.gov/news/2015/06/18/did-you-know-imprisonment-costs-8-times-more-supervision>.

⁷³ See discussion *supra* Part III (The Benefits of Veterans Treatment Courts: Effectiveness).

⁷⁴ See 18 U.S.C. § 3565 (2015).

⁷⁵ Jones, *supra* note 61, at 317.

⁷⁶ Gavriel Jacobs, Katharine McFarland & Gabe Ledeen, *Serving Those Who Served: Veterans Treatment Courts in Theory and Practice 4* (unpublished paper), http://law.stanford.edu/wp-content/uploads/sites/default/files/child-page/266901/doc/slpublic/Jacobs_McFarland_Ledeem.pdf (citing COOK COUNTY STATE ATTORNEY'S OFFICE, REPORT ON THE COOK COUNTY VETERANS TREATMENT COURT SYSTEM (Sept. 2011)).

⁷⁷ Marlowe, *supra* note 33.

⁷⁸ U.S. COURTS, *supra* note 72.

⁷⁹ Randall T. Shepard, *The Great Recession as a Catalyst for More Effective Sentencing*, 23 FED. SENT. REP. 146 (Dec. 2010); RAND CORP., *supra* note 46, at 176.

⁸⁰ See Osher, *supra* note 33.

⁸¹ In the context of a U.S. Army contribution to a VTC, this is likely someone designated as a SAUSA. This assertion is based on the author's recent professional experience in establishing the VTC at Fort Hood, Texas, in January 2016 [hereinafter Professional Experiences].

establishment. The staff work and coordination involved in launching the program will vary depending on the nature of the specific program and relationships among the court's key stakeholders.⁸² Once the VTC reaches its initial operating capability, the VTC team members⁸³ can incorporate the VTC into existing court programs to minimize the administrative and logistical burden of the VTC.⁸⁴ Ultimately, an operational VTC will require approximately four to eight hours per month from each of the VTC stakeholders to include the federal magistrate judge and SAUSA.⁸⁵ While not insignificant, the benefits of developing a VTC outlined above compare quite favorably to this burden.

IV. The Need for Federal Veterans Treatment Courts in and around Military Installations

Simply put, VTCs need to be where Veterans are. Veterans congregate on and near military installations.⁸⁶ Whether they are retirees, Veterans married to active duty service members, Veterans now working as contractors or government civilians, or Veterans who remained in the area after separation for other reasons, large military installations have a disproportionate number of Veterans relative to other similar locations.⁸⁷ Military installations, therefore, likely have significant numbers of defendants who would qualify for participation in a VTC. Additionally, military installations also tend to have significant numbers of Veterans' community and civic organizations which are ripe for recruiting Veteran mentors.

Finally, locations in and around military installations have prosecutors, judges, defense counsel, and other stakeholders who are more familiar with military culture. In particular, most major military installations have active duty service members who serve as SAUSAs and prosecute federal crimes that occur on the installation. The military SAUSA bridges the divide between military and civilian federal authorities and facilitates communication and coordination among military leaders, the U.S. Attorney's Office (USAO), and federal courts.

On enclaves of exclusive federal jurisdiction, federal courts are the only forum for criminal offenses including petty offenses, misdemeanors, and felonies.⁸⁸ This means federal enclaves require the federal court to address the same type of cases as a state court would off the installation. Under these circumstances, federal courts should look to state jurisdictions for best practices, especially when those best practices advance federal priorities.

Importantly, VTCs align impeccably with the aim of current Department of Justice (DoJ) policies. In particular, VTCs embody the vision of the Service Members and Veterans Initiative which seeks to serve justice-involved Veterans with a more direct application of available DoJ resources.⁸⁹ While the DoJ has not yet focused a deliberate line of effort on federal VTCs, the DoJ is supporting VTCs through training provided by the DoJ's Bureau of Justice Assistance.⁹⁰ Additionally, as a sign of the rapid spread of VTCs, some U.S. Attorney's Offices are already supporting VTCs in and around U.S. Army installations.⁹¹

Additionally, the establishment of federal VTCs would further several aims of the Attorney General's Smart on Crime initiative:⁹² Specifically, VTCs endeavor for more efficient application of limited criminal justice resources, fairer enforcement of the law, just punishment for low-level nonviolent offenders, stronger protections for vulnerable populations, and reductions in recidivism.⁹³ In line with the Attorney General's aims, VTCs break Veterans out of the vicious cycle of poverty, criminality, and incarceration by addressing the triggering issue and giving control back to the Veterans.⁹⁴ Moreover, the application of supervision and treatment that promote evidence-based approaches instead of incarceration fulfills the Attorney General's stated intention of rethinking the DoJ responses to crime with movement away from mass imprisonment.⁹⁵

Establishing VTCs on and around Military Installations advances Department of Defense (DoD) objectives as well. Installation commanders are responsible for protecting personnel and property in their areas of responsibility against criminal activity.⁹⁶ As discussed above, the establishment of a VTC provides a cost-effective means of reducing

⁸² See discussion *infra* Part IV.

⁸³ *Id.*

⁸⁴ Professional Experiences, *supra* note 81.

⁸⁵ *Id.*

⁸⁶ Chris Adams, *Large Numbers of Vets with PTSD Live Near Military Bases*, MCCLATCHYDC (April 10, 2014), <http://www.mcclatchydc.com/news/nation-world/national/national-security/article24766264.html>.

⁸⁷ *Id.*

⁸⁸ 18 U.S.C. § 7 (2001).

⁸⁹ Stuart F. Delery, *Acting Associate Attorney General Stuart F. Delery Announces The Service Members and Veterans Initiative*, DEP'T OF JUST. (March 19, 2015), [https://www.justice.gov/opa/blog/acting-associate-](https://www.justice.gov/opa/blog/acting-associate-attorney-general-stuart-f-delery-announces-servicemembers-and-veterans)

[attorney-general-stuart-f-delery-announces-servicemembers-and-veterans](https://www.justice.gov/opa/blog/acting-associate-attorney-general-stuart-f-delery-announces-servicemembers-and-veterans) (last visited Sept. 28, 2016).

⁹⁰ *Servicemembers and Veterans Initiative: About the Initiative*, DEP'T OF JUST., <https://www.justice.gov/crt-military/about-initiative-0> (last visited Sept. 28, 2016).

⁹¹ DEP'T VET. AFFS., *supra* note 28.

⁹² DEP'T OF JUST., *supra* note 31.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ U.S. DEP'T OF ARMY, REG. 190-16, PHYSICAL SECURITY para. 1-4c(1) (31 May 1991).

recidivism and crime.⁹⁷ By supporting the development of a VTC, the commander with installation security responsibility demonstrates a commitment to implementing an effective means of reducing future crime and promoting public safety.

Federal VTCs on and around military installations also have the potential to augment military justice processing in ways that promote good order and discipline and provide better care for service members transitioning due to misconduct. Many service members charged with federal crimes become former service members soon after the offense is discovered by military authorities.⁹⁸ Federal VTCs with jurisdiction over military installations can help bridge the divide between the active duty “problem Soldier” and drug or mental health treatment provided by the VA. This ultimately meets the needs of the commander and the Soldier by quickly removing the Soldier from the formation while caring for that Soldier during his transition out of the military. Such a possibility is particularly helpful in the current environment of significant force reductions.⁹⁹

As an example of how this works, consider the case of a Soldier who would ordinarily be discharged under other than honorable conditions for positive urinalyses or DWIs. If the Soldier agrees to plead guilty to a federal offense and enroll in the VTC, and the separation authority finds participation in the VTC to be significant enough mitigation to discharge him “under honorable conditions”¹⁰⁰ instead of unfavorably, the result is a win-win.¹⁰¹ The Army is able to quickly

remove a Soldier who is undermining unit discipline, and the Soldier receives transition assistance in the form of supervision, therapy, and mentorship to address his substance use disorder and the challenges of transitioning to civilian life. Should the Soldier subsequently fail to complete the VTC program, the Soldier’s guilty plea would be finalized to conviction and he would be sentenced in accordance with the federal sentencing guidelines.¹⁰² While this course of action may be appropriate in only a limited set of cases, it will make a tremendous impact in the cases where it is used.

A VTC would also be a valuable tool for commanders of Warrior Transition Units (WTUs). Warrior Transition Units often have large numbers of Soldiers who have pending medical retirements. These Soldiers are not immune from misconduct, but frequently there are also significant mitigating or extenuating circumstances readily apparent in their cases. Soldiers are assigned to WTUs because they are working to overcome a physical or mental disability that prevents them from performing as required in their military occupational specialty.¹⁰³ Often, Soldiers assigned to the WTU are evaluated for the possibility of receiving a medical retirement, a process that can take several months. During the pendency of the evaluation process, a Soldier with substance use disorder or some other mental health-related misconduct could enroll in a VTC program in support of a commander’s decision to approve the Soldier’s medical retirement.

⁹⁷ See discussion *supra* Part III (Benefits of Veterans Treatment Courts).

⁹⁸ Matthew Wolfe, *From PTSD to Prison: Why Veterans Become Criminals*, THE DAILY BEAST (July 28, 2013), <http://www.thedailybeast.com/articles/2013/07/28/from-ptsd-to-prison-why-veterans-become-criminals.html>.

⁹⁹ C. Todd Lopez, *Army to Realign Brigades, Cut 40,000 Soldiers, 17,000 Civilians*, ARMY NEWS SERV. (July 9, 2015), https://www.army.mil/article/151992/Army_to_realign_brigades__cut_40_000_soldiers__17_000_civilians/.

¹⁰⁰ If the VTC intends to use the VA Hospital as a care provider, the veteran must receive a characterization of service of General (under honorable conditions) or Honorable. See 38 C.F.R. § 3.12 (2016). Possible modifications to existing law could create a contingent favorable discharge status which becomes permanent upon completion of a VTC program but would remain unfavorable if the Veteran fails out of the VTC. Alternatively, a judge or prosecutor could draft a memorandum for the Army Board for Correction of Military Records or Army Discharge Review Board in support of an upgraded characterization of service based on the Veterans substance use disorder or other mental health diagnosis and subsequent completion of a VTC program.

There are several procedural requirements and practical considerations: First, the VTC must have jurisdiction over the offense. If it is a federal VTC, that means the offense is typically limited to possession of controlled substances (there is no general federal prohibition of use of controlled substances) or the offense must have occurred within the special maritime and territorial jurisdiction of the United States and therefore be subject to specific federal criminal legislation or the Assimilative Crimes Act.

Second, this process will likely only work effectively if it moves the Soldier quickly from Active Duty to the VTC. That requires minimizing all possible delays, to include delays incumbent with appointment of civilian defense counsel. Trial Defense Attorneys (with a modification to

Army Regulation 27-40) or Legal Assistance Attorneys could be admitted *pro hac vice* to the federal court for the arraignment and admission into the VTC, and then withdraw from the attorney-client relationship after the service member is enrolled in the VTC and separated from the Army.

Third, a VTC is only a viable option if the Veteran remains near the site of the court, his supervision, and treatment providers, unless there is a viable court available to transfer supervision. At Fort Hood, the VTC generally requires Veterans live within 100 miles of the installation to be eligible.

Practically speaking, the Soldier’s separation could be approved with execution deferred for the period necessary to present the application to the VTC Team and for the Veteran to be arraigned finalizing the acceptance into the VETS Court. At Fort Hood, that process takes 2.5 to 4.5 weeks.

¹⁰² 18 U.S.C. § 3551 (1990).

¹⁰³ *WCTP Entry Criteria*, U.S. ARMY WARRIOR TRANSITION COMMAND <http://www.wtc.army.mil/modules/soldier/s1-entryCriteria.html>, (last visited Sept. 29, 2016).

“In order to be considered eligible for entry into the Warrior Care and Transition Program, Soldiers must meet the below entry criteria for their component. [Active Component:]

- (1) Soldier has received or is anticipated to receive a profile of more than six months duration, with duty limitations that preclude the Soldier from training or contributing to unit mission accomplishment, and the complexity of the Soldier’s condition requires clinical case management.
- (2) Soldier’s psychological condition is evaluated by a qualified medical or behavioral health provider as posing a substantial danger to self or others if the Soldier remains in the unit.

Id.

As VTCs continue to expand their reach, the Army JAG Corps could promote the implementation of these courts in and around Army installations to support command security imperatives. By leading the development of federal VTCs, the Army JAG Corps could better influence their implementation in ways which advance U.S. Army and commanders' interests while demonstrating the Army JAG Corps' commitment to promoting the welfare of Veterans, transitioning service members, and military and local communities.

IV. The VETS Court at Fort Hood

Recognition of the benefits of VTCs outlined above drove the establishment of a VTC on Fort Hood. In less than six months from the initial proposal of a federal VTC to the Federal Magistrate Judge and U.S. Attorney, the VTC on Fort Hood was accepting its first Veterans. The Fort Hood "Veterans Endeavor for Treatment and Support" or "VETS Court" diverts Veterans with service-connected¹⁰⁴ substance use disorders or other mental health challenges out of the court system and into enduring treatment solutions with the VA. The current pilot program permits up to twelve Veterans to enroll in the program.

The VETS Court came together through an interagency agreement among local leaders of the U.S. District Court, the U.S. Attorney's Office, the U.S. Pretrial Services Office, and the Department of Veterans Affairs.¹⁰⁵ Shortly after establishment, the U.S. Probation Office also became involved. The VETS Court operations required no additional

funding,¹⁰⁶ though the U.S. District Court has supplemented the program with an annual budget of \$3,000 in non-appropriated funds that are used to provide nominal rewards¹⁰⁷ for participants' advancement and completion of the program.

The Fort Hood VETS Court requires a guilty plea to a federal crime or a true plea¹⁰⁸ to a probation violation as a condition of entry. Studies have found such models foster better long-term results than pre-plea diversion programs.¹⁰⁹ Prior to the plea, the VETS Court Team considers the Veteran's application to the VETS Court. This group consists of the federal magistrate judge, the SAUSA, a representative of the local Defense bar, U.S. Pretrial Services and U.S. Probation Officers, the VJO social worker from the VA, and the Veteran Peer Mentor Coordinator. At Fort Hood, acceptance into the VETS Court requires majority approval of the VETS Team with the SAUSA serving as the gatekeeper for applications.¹¹⁰

During the staffing of cases, applications are discussed and, if necessary, additional information may be requested from the Veteran's defense counsel. If the VETS Court team has concerns regarding the application that need further clarification, the VETS Court team may invite the applicant-Veteran to personally attend and answer questions. The retained or appointed defense counsel may attend and advocate for admission to the VETS Court, but she does not attend the staff deliberations. Federal Rule of Evidence 410 privilege applies to the application and all statements made

¹⁰⁴ No formal categorization of "service-connected" is required for the Fort Hood VETS Court. Instead, whether a mental health disorder is found to be "service-connected" sufficient for participation in the program relies upon an evaluation of all available facts and circumstances to include the timing of the onset of symptoms, formal diagnoses, preexisting conditions, and the relationship between the disorder and stresses of military life. Interagency Agreement: Veterans Endeavor for Treatment and Support (VETS) Alternative to Prosecution Program, executed August 12, 2016, on file with the author [hereinafter Interagency Agreement].

¹⁰⁵ The Interagency Agreement establishing the Fort Hood VETS Court explicitly adopted the recommendations of the National Association of Drug Court Professionals. *Defining Drug Courts: The Key Components*, NAT'L CRIM. JUST. REFER. SERV. (Oct. 2004) <https://www.ncjrs.gov/pdffiles1/bja/205621.pdf>:

"(1) For those participants with substance use disorders, the program integrates alcohol and drug treatment services with justice system case processing. (2) Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights. (3) Eligible participants are identified early and promptly placed in the program. (4) For those participants with substance use disorders, the program provides access to a continuum of alcohol, drug, and other related treatment and rehabilitation services. (5) For those participants with substance use disorders, abstinence is monitored by frequent alcohol and drug testing. (6) A coordinated strategy governs the program's responses to participants' compliance and noncompliance. (7) Ongoing judicial interaction with each program participant is essential. (8) Monitoring and evaluation measure the achievement of program goals and gauge effectiveness. (9) Continuing interdisciplinary

education promotes effective program planning, implementation, and operations. (10) Forging partnerships among the program's agency participants, other public agencies, and community-based organizations generates local support and enhances the program's effectiveness."

Id. These are similar to those developed for Mental Health Courts. *See Improving Responses to People with Mental Illnesses: The Essential Elements of a Mental Health Court*, BUREAU OF JUST. ASSIST. (2007), https://www.bja.gov/Publications/mhc_essential_elements.pdf.

¹⁰⁶ Aside from the opportunity cost associated with the effort. *See* discussion *supra* Part IV.

¹⁰⁷ The rewards in the Fort Hood VETS Court include an "ID Tag" inscribed with Army Values and a certificate acknowledging the advancement. Professional Experiences, *supra* note 81.

¹⁰⁸ A "true plea" is entered for probation revocation hearings. With such a plea, the probationer admits the alleged violation is true. *See* FED. JUD. CTR., BENCHMARK FOR U.S. DISTRICT COURT JUDGES 141 (6th ed. 2013), [http://www.fjc.gov/public/pdf.nsf/lookup/Benchbook-US-District-Judges-6TH-FJC-MAR-2013-Public.pdf/\\$file/Benchbook-US-District-Judges-6TH-FJC-MAR-2013-Public.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/Benchbook-US-District-Judges-6TH-FJC-MAR-2013-Public.pdf/$file/Benchbook-US-District-Judges-6TH-FJC-MAR-2013-Public.pdf).

¹⁰⁹ Russell, *supra* note 21, at 523.

¹¹⁰ Veterans' applications to the Fort Hood VETS Court have been declined for various reasons, including: there being no apparent connection between the offense and the mental health issue; the defendant did not live within 100 miles of Fort Hood precluding participation in treatment and mentoring components; and no diagnosed substance use disorder or other mental health issue.

by the Veteran-applicant during this process as part and parcel of plea discussions.¹¹¹

The VETS Court team evaluates applications to the program against admission requirements and space available. The Fort Hood VETS Court requires the defendant (1) to be charged with a misdemeanor, (2) to have prior military service, (3) to be eligible for VA Health benefits, (4) to have an underlying diagnosed substance use disorder or other mental health issue that contributed to the offense,¹¹² and (5) to have a connection between the substance use disorder or other mental health issue and the Veteran's military service. The VETS Court Team considers the connection between the mental health issue and the offense, and the connection between the issue and the Veteran's military service, in light of all available information, to include the Veteran's perspective conveyed on his application. Generally, the VETS Court Team finds defense counsel advocacy most valuable in assessing these criteria.

Finally, priority in the Fort Hood VETS Court is given to those Veterans who are not already connected with VA Healthcare, though prior enrollment in VA Healthcare does not necessarily preclude admission into the Fort Hood VETS Court. This "priority" status is intended to maximize the impact of the Fort Hood VETS Court by establishing connections to VA Healthcare for Veterans who had not previously accessed these resources.

If approved for acceptance by a majority vote of the VETS Court Team, the Veteran enters a guilty or true plea during his arraignment or revocation hearing at the next VETS Court session. During that court session, the federal magistrate judge conducts the standard plea colloquy with the Veteran, noting the enrollment agreement to the VETS Court as the "plea agreement" in the case. However, no ultimate finding regarding the offense or violations is entered after acceptance of the plea. Instead the federal magistrate judge makes findings that the plea is knowing and voluntary, and then holds the plea in abeyance pending discharge of the Veteran from the VETS Court program. The Veteran's bond or probation conditions are subsequently amended to require participation in the VETS Court program. The federal magistrate judge then departs the courtroom momentarily. When he returns, he does so in civilian attire but without his robe as a means of signifying a different form of engagement with the Veterans. Then he begins the VETS Court Open Hearing.

The federal magistrate judge prepares for the VETS Court Open Hearing during the same staffing session used to consider new applicants. During that staffing session, the Supervision Officers and VJO provide status updates to the

VETS Court Team regarding each Veteran's compliance, participation, and outstanding issues. If appropriate,¹¹³ the Mentor Coordinator also updates the Court on the mentor relationship and participation. The Supervision Officers record much of this information in a staffing sheet shared with the VETS Court Team at the staffing session.

During the VETS Court Open Hearing, the Federal Magistrate Judge engages directly with each of the Veterans in a round table setting. All of the Veterans and the VETS Court team gather around a table set up in the courtroom. This is designed to facilitate greater participation by the Veterans and collaboration among the VETS Court Team. The discussion with each Veteran led by the federal magistrate judge addresses the current progress of each of the Veterans, praise for effort when appropriate, admonitions or sanctions if necessary, along with an update from the Veteran about his perceived successes and challenges.

The full agenda of the Fort Hood VETS Court takes approximately two to three hours on two afternoons each month. The first hour is used for staffing the cases and considering new applications. This is followed by thirty minutes of time for the Veteran Mentors to gather and conduct their group meeting. The Veteran participants then meet with the Veteran Mentors en masse for thirty minutes. The agenda concludes with the open court hearing, which typically lasts from thirty to sixty minutes depending on the number of participants.

Upon a Veteran's acceptance into the VETS Court, the Veteran's Supervision Officer and the VJO prepare a case plan for the Veteran in consultation with VA treatment providers and the VETS Court Team. At the first staffing of the Veteran's case, the federal magistrate judge reviews and approves the case plan. At subsequent staffing meetings, the VETS Team may discuss and recommend modifications of the case plan, ultimately subject to the approval of the federal magistrate judge.

As the Veteran progresses through the program, reporting requirements and supervision are gradually reduced. "Promotions" signify the progress of each Veteran with each promotion having set time-in-program and achievement requirements. A Veteran must be recommended for promotion by her Supervision Officer and the SAUSA. The federal magistrate judge approves each promotion. The Veteran is praised and recognized with each promotion, and, after reading a written statement reflecting on her experience, receives a nominal award (currently a Military ID Tag with an imprinted Army Value along with a certificate). Once a Veteran reaches Veteran Grade 5, she has reached the "maintenance period" of the VETS Court and no longer must

¹¹¹ FED. R. EVID. 410.

¹¹² The diagnosis must be verifiable by VA Healthcare providers. Interagency Agreement, *supra* note 104.

¹¹³ The Mentor Coordinator and the Veteran Mentors are instructed not to betray the confidence of the Veteran participant unless there is an imminent

risk to life or limb. For example, continued illegal drug use by the Veteran would not ordinarily require the Mentor to inform the Court. Instead, the Mentor would encourage the Veteran to self-report violations for the sake of obtaining help and treatment. Professional Experiences, *supra* note 81.

attend every court proceeding. Grades 1 thru 4 each typically last for eight to twelve weeks. Grade 5, the “maintenance period,” extends for six months. Successful completion of Grade 5 results in dismissal with prejudice of the charges pending against the Veteran.

V. Alternatives to the Fort Hood Model

While the Fort Hood program has been designed with the intent of creating a model replicable at other Army installations, other alternatives may work better in some situations.¹¹⁴ For example, some VTCs address Veterans in a reentry model as opposed to a pretrial diversion model.¹¹⁵ Reentry models provide Veterans who must be supervised following a term of incarceration with a structured, therapeutic environment which rewards progress.¹¹⁶ Successful completion results in a reduction in the supervision period or intensity.¹¹⁷ Such models are particularly effective if the VTC is open to more serious offenses.¹¹⁸

Other VTCs look to different eligibility criteria, for example, restricting eligibility to certain categories of Veterans (e.g., “combat” Veterans only), or certain types of offenses (e.g., no domestic violence cases).¹¹⁹ Some VTCs incentivize completion of the program differently; instead of dismissal of charges, completion merits expungement, a reduction in charge, or a recommendation for supervision in lieu of incarceration.¹²⁰ Finally, some federal courts may place supervision conditions on Veterans that require their participation in a state jurisdiction VTC; such arrangements rely on close coordination between federal and state authorities, along with possible remuneration.¹²¹ Ultimately, the parameters of the program must meet the needs of the Veterans, the court, and the community.¹²² As these

programs become more established, broadly accepted best-practices and guidelines will surely follow.¹²³

VI. How to Establish a Federal Veterans Treatment Court at Other Army Installations

The establishment of a federal VTC needs support from the key leaders who can approve the use of existing resources for such an initiative. Ultimately, a federal VTC will require the participation of a judge, prosecutor, defense counsel, VJO, and court supervision officer from U.S. Pretrial Services and U.S. Probation. Each of these individuals play a necessary role in some aspect of the VTC program. Some VTCs also involve a benefits officer from the VA to review the Veteran participants’ benefits eligibility. In addition to rallying leaders from each of those agencies, a successful VTC will need someone to recruit and coordinate a team of Veteran mentors who will support, coach, and encourage the participants in the court, complementing the VETS Court team with Veteran and local community participation.

First, a prospective VTC champion¹²⁴ must learn as much as possible about Problem Solving Courts and VTCs. Advocating for the program requires fluency in the program’s benefits and a forecast of anticipated resistance points. For the champion to develop this fluency, she must read as much as possible about the VTCs, reach out to current practitioners,¹²⁵ and schedule visits to operational VTCs. Seeking out training through Justice for Vets and the National Association of Drug Court Professionals should also be a priority.¹²⁶

As one example of an anticipated resistance point, consider that the operation of a VTC requires a significant time commitment from an otherwise exceptionally busy Federal Magistrate Judge. Judge Jeffrey Manske leads the

¹¹⁴ See Russell, *supra* note 21, at 523; MCGUIRE, *supra* note 25.

¹¹⁵ See Russell, *supra* note 21.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² VETS Courts have been endorsed by the ABA in all of their formats:

FURTHER RESOLVED, that the American Bar Association urges state, local, and territorial courts to facilitate the development of Veterans Treatment Courts, including but not limited to specialized court calendars or the expansion of available resources within existing civil and criminal court models focused on treatment-oriented proceedings.

AMER. BAR ASS’N, RECOM. 105A, at 1, http://www.americanbar.org/content/dam/aba/migrated/homeless/publicdocuments/ABA_Policy_on_VETS_Treatment_Courts_FINAL.authcheckdam.pdf.

¹²³ As an example, some studies have found that courts that dismissed or expunged convictions appear more effective than those with mixed or no uniform incentive. Wilson, *supra* note 8, at 479.

¹²⁴ For this audience, the prospective champion is the SAUSA assigned to the jurisdiction.

¹²⁵ Attending the National Association of Drug Court Professionals Annual Training and Vets Court Conference is a great means of gathering information necessary to start or improve a VTC.

¹²⁶ The Justice for Vets Treatment Court Planning Initiative can be of tremendous assistance for champions seeking to launch a VTC. See *Veterans Treatment Court Planning Initiative*, JUST. FOR VETS, <http://www.justiceforvets.org/2016-vtcepi> (last visited Sept. 20, 2016). Justice for Vets runs a national mentor court program in collaboration with the Center for Substance Abuse Treatment and Substance Abuse and Mental Health Services Administration, and this is a tremendous means of training the VTC’s champion and other stakeholders. See *Veterans Treatment Court Mentor Program*, JUST. FOR VETS, <http://justiceforvets.org/veteran-mentor-courts> (last visited Sept. 20, 2016).

Fort Hood VETS Court; he is a Federal Magistrate Judge who has presided over cases arising at Fort Hood for fifteen years. His experience and familiarity with the military led him to prioritize the VTC alongside his many other obligations.

The initiative must be staffed for approval like any other interagency cooperation arrangement. The court's champion should rely on her strongest personal relationships among the key court stakeholders and seek assistance to elevate the initiative to the priority list of senior officials within the organizations. Convincing arguments supported by data and metrics will compel these senior officials to listen. The champion must have a clear vision of the way forward and be prepared to incorporate feedback and compromise where necessary. When the champion finds initial receptiveness, she can lead guided visits to operational VTCs to further develop interest in the initiative. Practitioners at other VTCs are uniformly supportive of other courts' initiatives and will share their charter documents and lessons learned with others who are developing new projects.

Once momentum is building, the champion must identify the appropriate VJO,¹²⁷ and bring him into the planning process. The VJO is a social worker from the Department of Veterans Affairs who connects Veterans involved in the criminal justice system to health and social services.¹²⁸ In the context of the VTC, the VJO provides a linkage between the VTC and treatment providers at the VA, ensuring appropriate communication regarding each Veteran's participation in treatment and progress.¹²⁹

The team, including the Judge, USAO, VJO, U.S. Pretrial Services and Probation Officers, and Defense Representative or Federal Defender, must iron out the details of the interagency agreement and the participant enrollment agreement. These two documents will form the charter for the VTC and address key policy issues such as admission criteria, program length, and possible incentives and sanctions.¹³⁰

As the team settles the details and the planning comes to a close, the champion should begin work on a launch event—something that will promote awareness of the VTC and recognize the efforts of those involved in the planning. The Public Affairs Office (PAO) of the senior installation headquarters and corollary from the USAO should be able to assist; they can arrange a press release and media availability. The PAO section may also arrange for the attendance of senior installation and USAO officials.

Throughout this process, the champion must be attentive to the critical issue of developing the mentor program. This may be the biggest challenge of launching an effective VTC, but it is also the true key to the VTC's effectiveness. Among the first tasks in developing the mentor program, the champion must identify a suitable mentor coordinator. This person must fully appreciate the role of the mentor and be able to take on the herculean task of growing and maintaining a base of quality, trained, and vetted Veteran mentors to work with the Veterans participating in the court. The mentor program at Fort Hood has thrived under the leadership of CSM (Ret.) Frank Minosky and SFC (Ret.) Acquanelta Pullins.

To find the right mentor coordinator, the champion will need to network and socialize the VTC in and around the local community with Veterans organizations and through VA contacts. The installation Retiree's Council will be a great resource (the Fort Hood mentor coordinators were both active on the Fort Hood Retiree's Council), as will local chapters of the American Legion, Veterans of Foreign Wars, Rotary International, Kiwanis, etc. The Mentor Coordinator must buy into the vision of the VTC and work well with the Judge and other stakeholders. Retired senior enlisted members are ideal for this position; they can then serve as a de facto senior enlisted advisor to the federal magistrate judge, a relationship similar to a brigade commander with her command sergeant major.

Working together, at least initially, the VTC's champion and the Mentor Coordinator need to rally a group of Veterans available to mentor the Veteran participants in the VTC. The VETS Court at Fort Hood did this by inviting prospective mentors to attend and observe all facets of the VETS Court proceeding without pushing for immediate commitment. Prospective mentors get an overview of the VTC from the champion and other key stakeholders before the staffing of applications and discussion of current cases. After the end of the open court hearing, the key stakeholders solicit input from the prospective mentors and may seek an informed commitment when the appropriate.

Not every Veteran is up to the task of mentoring in a VTC. In addition to the obvious volunteer time commitment, the mentor must be a positive influence on the Veterans and the VTC. At a minimum, prospective mentors should be screened for current criminal issues (noting that some tremendous mentors may have past criminal transgressions or be in substance use recovery) so the VTC team may make an

¹²⁷ See *Veterans Justice Outreach Program*, U.S. DEP'T OF VETERANS AFF., <http://www.va.gov/HOMELESS/VJO.asp> (last visited Sept. 20, 2016) (providing a complete list of Veterans Justice Outreach Specialists employed by the Department of Veterans Affairs).

¹²⁸ U.S. GOV'T ACCOUNTABILITY OFF., GAO-16-393, *VETERANS JUSTICE OUTREACH PROGRAM: VA COULD IMPROVE MANAGEMENT BY ESTABLISHING PERFORMANCE MEASURES AND FULLY ASSESSING RISKS* (April 2016).

¹²⁹ *Id.*

¹³⁰ In addition to the Interagency Agreement and Veterans Enrollment Agreement, the VETS Court at Fort Hood found a need for a Veteran's participant application, a confidentiality notice for observers, staffing meeting notes, and a mentor charter. Several of these documents are available online. See *Fort Hood VETS Court*, FORT HOOD, <http://www.hood.army.mil/vetscourt.aspx> (last visited Sept. 20, 2016).

informed decision regarding the prospective mentor's participation in the VTC.

After suitable mentors are identified, they must be trained in the methods of a VTC so they fully understand their role and the role's limitations. Above all else, the mentors must recognize they are present to encourage and support the Veterans during treatment; the mentors may not substitute their judgment as to what is best for the Veteran in the place of the VTC treatment professionals or the court. At Fort Hood, the mentor program did not coalesce until a few months after the VETS Court was up and running. Incremental progress, both in developing the mentor program and expanding the number of Veteran participants made this appropriate and manageable.

Each VTC will develop its own flavor. Continued training of the VTC team, to include the federal magistrate judge, SAUSA, Supervision Officers, and Mentor Coordinator, will ensure use of best practices and fidelity to the treatment court model that has proven so successful.¹³¹ Much of the VTC's personality will rely on the federal magistrate judge and how she wants to work with the Veterans. Regardless, the VTC will be successful so long as the stakeholders have a genuine desire to help Veterans deal with their current challenges and reconcile them with the Veteran and local community.

VII. Conclusion

The Army JAG Corps should lead the way in demonstrating care for Veterans through development of federal VTCs. Relying on the relationships built and maintained through a successful SAUSA program, major Army installations could make a significant impact in connecting Veterans to needed treatment, thereby reducing Veteran recidivism, Veteran suicide, and Veteran homelessness. As described above, VTCs advance DoD and DoJ priorities, and by leading the organization of federal VTCs the Army JAG Corps can shape the implementation of these programs while making a lasting, positive impact on the lives of justice involved Veterans and their communities.

¹³¹ See, e.g., *supra* notes 125-26.